



Signed and Filed: March 14, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

ORDER DENYING MOTION FOR RELIEF FROM ORDER
BY SPIRO JANNINGS

On January 13, 2022, the court signed an *Order Disallowing and Expunging Claim No. 58462, Filed October 17, 2019, of Spiro Jannings* ("Order") (Dkt. 11829). On January 26, 2022, Creditor Spiro Jannings ("Jannings") filed the Motion for Relief From Order ("Motion") (Dkt. 11871) seeking to vacate the Order pursuant to Fed. R. Civ. P. 60(b) or 59(e) ("Rule"), as applied

1 to bankruptcy matters by Fed. R. Bankr. P. 9023 and 9024. For
2 the reasons stated below, the Court DENIES the Motion.

3 "A claim that has been allowed or disallowed may be
4 reconsidered for cause. A reconsidered claim may be allowed or
5 disallowed according to the equities of the case." 11 U.S.C. §
6 502(j). In the Ninth Circuit, a motion for reconsideration of
7 an allowed or disallowed claim shall be considered pursuant to
8 Rule 59 if the motion is filed within the applicable appeal
9 period, and pursuant to Rule 60 if the motion is filed after the
10 applicable appeal period but within a reasonable amount of time.
11 *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204,
12 209 (B.A.P. 9th Cir. 2006).

13 Jannings seeks relief under both Rule 59(e) and Rule 60(b),
14 but only makes an argument under Rule 60(b). Accordingly, the
15 court analyzes the Motion under Rule 60(b) alone. Under Rule
16 60(b), a court may reconsider or reverse its prior judgment in
17 several circumstances, which are:

- 18 (1) mistake, inadvertence, surprise, or excusable
19 neglect;
- 20 (2) newly discovered evidence that, with reasonable
21 diligence, could not have been discovered in time to
22 move for a new trial under Rule 59(b);
- 23 (3) fraud (whether previously called intrinsic or
24 extrinsic), misrepresentation, or misconduct by an
25 opposing party;
- 26 (4) the judgment is void;
- 27 (5) the judgment has been satisfied, released, or
28 discharged; it is based on an earlier judgment that has
been reversed or vacated; or applying it prospectively
is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Jannings argues that the court
should reverse its prior Order due to Jannings' excusable

1 neglect, or alternatively, "any other reason that justifies
2 relief" resulting from misplaced reliance on a request for
3 Debtors to agree to further delay a hearing Debtors' *Objection*
4 *to Claim* ("Objection") (Dkt. 11388) in favor of potentially
5 remanding the matter to state court. This explanation of
6 misplaced reliance only tells part of the story of Jannings'
7 purported excusable neglect.

8 In the Ninth Circuit, courts may apply a non-exclusive
9 four-factor framework "to determine whether missing a filing
10 deadline constitutes 'excusable' neglect." *Briones v. Riviera*
11 *Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997); *Pioneer Inv.*
12 *Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 394
13 (1993). Those four factors are "(1) the danger of prejudice to
14 the opposing party; (2) the length of delay and its potential
15 impact on the proceedings; (3) the reason for delay; and (4)
16 whether the movant acted in good faith." *Bateman v. U.S. Postal*
17 *Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000). Negligence on
18 the part of counsel may constitute excusable neglect. *Id.* at
19 1123; *Pioneer*, 507 U.S. at 395. It is imperative that the court
20 weigh all factors in making a determination of excusable
21 neglect. *Bateman*, 231 F.3d at 1224. Weighing all equitable
22 factors, the court determines that Rule 60(b) relief is not
23 available to Jannings.

24 The first factor weighs in favor of Jannings. There is
25 little danger of prejudice to Debtors other than the prejudice
26 that could result either from further delay of determination of
27 the Objection, or from the loss of a quick default victory.
28 Neither risk to Debtors constitutes the type of prejudice with

1 which the court is concerned. *Id.* at 1225, citing *Augusta*
2 *Fiberglass Coatings, Inc. v. Fodor Contracting Corp.*, 843 F.2d
3 808, 812 (4th Cir. 1988); *Hibernia Nat'l Bank v. Administracion*
4 *Cent. Sociedad Anonima*, 776 F.2d 1277, 1280 (5th Cir. 1985).
5 While Debtors argue that the concept of finality will be upended
6 should the Motion be granted, the Court disagrees. Any future
7 requests for relief from the court's prior orders will have to
8 meet the standards of Rule 60(b).

9 The second factor weighs in favor of Debtors. While
10 Jannings is correct that only thirteen days elapsed between the
11 docketing of the Order and the Motion, more than three months
12 have elapsed between Debtor's initial Objection, filed on
13 October 8, 2021, and Jannings' Motion, filed on January 26,
14 2022. Debtors extended the deadline for Jannings to oppose the
15 Objection to January 4, 2022, and Jannings deliberately did not
16 oppose the Objection. Instead, Jannings' counsel relied on
17 Debtors to agree to further delay the deadline. When Debtors
18 refused the request for more time on December 7, 2021, Jannings'
19 counsel opted to file a document titled on the docket as *Motion*
20 *to Dismiss and Abstain* ("Abstention Motion") (Dkt. 11753) on
21 December 28, 2021, which to this day has not been served or set
22 for hearing. As the extended deadline drew closer, Jannings'
23 counsel filed an ex parte *Motion to Extend Time* (Dkt. 11768) on
24 December 30, 2021, which requested the court indefinitely vacate
25 the opposition deadline pending the outcome of the (again,
26 unserved and un-set) Abstention Motion. After the court denied
27 the request to vacate the deadline, Jannings still did not file
28 any opposition. When given the chance by this court to oppose

1 the lodging of the Order by default, the opportunity was
2 declined with a statement from Jannings' counsel that he would
3 instead pursue a motion for relief from the Order. While a
4 potential delay resulting from a grant of reconsideration would
5 be relatively minor, the court must note the three-month delay
6 between the Objection and the entry of the Order, and the active
7 involvement of Jannings in that initial delay.

8 The third factor weighs heavily in favor of Debtors.
9 Jannings attempts to lay some of the blame with Debtors for not
10 quickly responding to a request for further extension of the
11 deadline along with a request to remand the lawsuit underlying
12 the Objection to state court. This attempt fails. Debtors did
13 not upset an agreement at the eleventh hour; at the time Debtors
14 declined the requests for further time and abstention, Jannings
15 still had twenty-eight days to timely file an opposition or to
16 set his Abstention Motion for hearing. This opportunity was
17 rejected instead for the maneuvers described above. Jannings
18 had time to file anything other than an opposition to the
19 Objection. The reason behind the refusal to file even a bare-
20 bones opposition is an unfortunate result of willfulness, not
21 neglect. The Motion newly reveals Jannings' state court
22 counsel's longstanding and difficult illness, to which the court
23 offers only its sympathies. However, counsel's illness was not
24 the cause of the delay. The Motion clearly explains that
25 because both Jannings' bankruptcy counsel and his state court
26 counsel had assumed Debtors would further continue the hearing,
27 no work had been undertaken in the two months between the
28 initial filing of the Objection and the Debtors' refusal to

1 further delay determination of the Objection. The default is
2 not a result of a passive mistake or an inability to work due to
3 illness, but an active litigation decision.

4 The fourth factor appears to be neutral. While the
5 deliberate delays of Jannings' counsel are not excusable, those
6 acts appear only to be misguided and not in bad faith. Every
7 decision by counsel appears to have been made in an effort to
8 garner the best outcome for Jannings. It is unfortunate those
9 efforts were ill-considered.

10 No other reason justifies relief here. No argument
11 supporting the basis of Jannings' Proof of Claim has been made
12 in any court, and the extended opportunity to do so has long
13 since passed.

14 Accordingly, the Motion is DENIED.

15 **END OF ORDER**
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COURT SERVICE LIST

ECF Recipients